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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
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12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 JAMMIN' JAVA CORP., dba MARLEY
17 COFFEE, SHANE G. WHITTLE, WAYNE
18 S. P. WEAVER, MICHAEL K. SUN, RENE
19 BERLINGER, STEPHEN B. WHEATLEY,
20 KEVIN P. MILLER, MOHAMMED A. AL-
21 BARWANI, ALEXANDER J. HUNTER,
22 and THOMAS E. HUNTER,

23 Defendants.
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Case No. 2:15-cv-08921 SVW (MRWx)

**FINAL JUDGMENT AS TO
DEFENDANT MICHAEL K. SUN**

1 The Securities and Exchange Commission (“Commission”) having filed an Amended
2 Complaint and Defendant Michael K. Sun (“Defendant”) having entered a general
3 appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this
4 action; consented to entry of this Final Judgment without admitting or denying the allegations
5 of the Amended Complaint (except as to jurisdiction and except as otherwise provided herein
6 in paragraph VII); waived findings of fact and conclusions of law; and waived any right to
7 appeal from this Final Judgment:

8 I.

9 IT IS HEREBY ordered, adjudged, and decreed that Defendant is permanently
10 restrained and enjoined from violating Section 5 of the Securities Act of 1933 (“Securities
11 Act”), 15 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption:

12 (a) unless a registration statement is in effect as to a security, making use of any
13 means or instruments of transportation or communication in interstate commerce or of the
14 mails to sell such security through the use or medium of any prospectus or otherwise;

15 (b) unless a registration statement is in effect as to a security, carrying or causing to
16 be carried through the mails or in interstate commerce, by any means or instruments of
17 transportation, any such security for the purpose of sale or for delivery after sale; or

18 (c) making use of any means or instruments of transportation or communication in
19 interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of
20 any prospectus or otherwise any security, unless a registration statement has been filed with the
21 Commission as to such security, or while the registration statement is the subject of a refusal
22 order or stop order or (prior to the effective date of the registration statement) any public
23 proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

24 IT IS FURTHER ordered, adjudged, and decreed that, as provided in Federal Rule of
25 Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual
26 notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers, agents,
27 servants, employees, and attorneys; and (b) other persons in active concert or participation
28 with Defendant or with anyone described in (a).

1 II.

2 IT IS HEREBY FURTHER ordered, adjudged, and decreed that Defendant is
3 permanently restrained and enjoined from violating, directly or indirectly, Section 13(d) of the
4 Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78m(d), and Rules 13d-1
5 and 13d-2 thereunder, 17 C.F.R. §§ 240.13d-1 and 240.13d-2, by failing to file with the
6 Commission a statement on Schedule 13D, 17 C.F.R. § 240.13d-101, after acquiring directly or
7 indirectly the beneficial ownership of more than 5% of a class of equity securities registered
8 pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or failing to file with the
9 Commission an amendment disclosing a material increase or decrease in the percentage of the
10 class beneficially owned in accordance with the requirements of Section 13(d) of the Exchange
11 Act, 15 U.S.C. § 78m(d), and Rules 13d-1 and 13d-2 thereunder.

12 IT IS FURTHER ordered, adjudged, and decreed that, as provided in Federal Rule of
13 Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual
14 notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers, agents,
15 servants, employees, and attorneys; and (b) other persons in active concert or participation
16 with Defendant or with anyone described in (a).

17 III.

18 IT IS HEREBY FURTHER ordered, adjudged, and decreed that Defendant is barred,
19 for five years following the date of entry of this Final Judgment, from participating in an
20 offering of penny stock, including engaging in activities with a broker, dealer, or issuer for
21 purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any
22 penny stock. A penny stock is any equity security that has a price of less than five dollars,
23 except as provided in Rule 3a51-1 under the Exchange Act, 17 C.F.R. § 240.3a51-1.

24 IV.

25 IT IS FURTHER ordered, adjudged, and decreed that Defendant is liable for
26 disgorgement of \$400,000, representing profits gained as a result of the conduct alleged in the
27 Amended Complaint, together with prejudgment interest thereon in the amount of \$33,796.19,
28 for a total of \$433,796.19. Defendant shall make this payment pursuant to the terms of the

1 payment schedule set forth in paragraph V below.

2 Defendant may transmit payment electronically to the Commission, which will provide
3 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly
4 from a bank account via Pay.gov through the SEC website at [http://www.sec.gov/about/](http://www.sec.gov/about/offices/ofm.htm)
5 [offices/ofm.htm](http://www.sec.gov/about/offices/ofm.htm). Defendant may also pay by certified check, bank cashier's check, or United
6 States postal money order payable to the Securities and Exchange Commission, which shall be
7 delivered or mailed to:

8 Enterprise Services Center
9 Accounts Receivable Branch
10 6500 South MacArthur Boulevard
Oklahoma City, OK 73169

11 and shall be accompanied by a letter identifying the case title, civil action number, and name of
12 this Court; Michael K. Sun as a defendant in this action; and specifying that payment is made
13 pursuant to this Final Judgment.

14 Defendant shall simultaneously transmit photocopies of evidence of payment and case
15 identifying information to the Commission's counsel in this action. By making this payment,
16 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part
17 of the funds shall be returned to Defendant. The Commission shall send the funds paid
18 pursuant to this Final Judgment to the United States Treasury.

19 The Commission may enforce the Court's judgment for disgorgement and prejudgment
20 interest by moving for civil contempt (and/or through other collection procedures authorized
21 by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay
22 post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

23 V.

24 Defendant shall pay the total of disgorgement and prejudgment interest due of
25 \$433,796.19 in 4 installments to the Commission according to the following schedule: (1)
26 \$85,259.24 within 14 days of entry of this Final Judgment; (2) \$85,259.24 within five months
27 of entry of this Final Judgment; (3) \$131,638.85 within six months of entry of this Final
28 Judgment; and (4) \$131,638.86 within 10 months of entry of this Final Judgment. Payments

1 shall be deemed made on the date they are received by the Commission and shall be applied
2 first to post judgment interest, which accrues pursuant to 28 U.S.C. § 1961 on any unpaid
3 amounts due after 14 days of the entry of Final Judgment. Prior to making the final payment
4 set forth herein, Defendant shall contact the staff of the Commission for the amount due for
5 the final payment.

6 If Defendant fails to make any payment by the date agreed and/or in the amount
7 agreed according to the schedule set forth above, all outstanding payments under this Final
8 Judgment, including post-judgment interest, minus any payments made, shall become due and
9 payable immediately at the discretion of the staff of the Commission without further
10 application to the Court.

11 VI.

12 IT IS FURTHER ordered, adjudged, and decreed that the Consent is incorporated
13 herein with the same force and effect as if fully set forth herein, and that Defendant shall
14 comply with all of the undertakings and agreements set forth therein.

15 VII.

16 IT IS FURTHER ordered, adjudged, and decreed that, solely for purposes of exceptions
17 to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations
18 in the Amended Complaint are true and admitted by Defendant, and further, any debt for
19 disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under
20 this Final Judgment or any other judgment, order, consent order, decree or settlement
21 agreement entered in connection with this proceeding, is a debt for the violation by Defendant
22 of the federal securities laws or any regulation or order issued under such laws, as set forth in
23 Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

24 VIII.

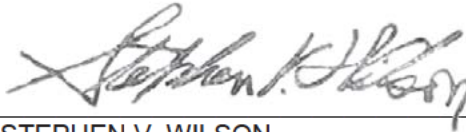
25 IT IS FURTHER ordered, adjudged, and decreed that this Court shall retain
26 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

27 IX.

28 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of

1 Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without
2 further notice.

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4 Dated: _____ May 24, 2017


STEPHEN V. WILSON
United States District Judge